

House File 861 - Introduced

HOUSE FILE _____
BY COMMITTEE ON LABOR

(SUCCESSOR TO HF 182)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act concerning disclosures of information by health care
2 workers and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 2155HV 82
5 ec/je/5

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1 1 Section 1. NEW SECTION. 147.105 PATIENT PROTECTION ==
1 2 HEALTH CARE WORKERS == REPORT OF ADVERSE EVENTS.
1 3 1. DEFINITIONS. As used in this section, unless the
1 4 context otherwise requires:
1 5 a. "Direct care worker" means a trained and supervised
1 6 individual who provides services, care, and emotional support
1 7 to patients and health care recipients.
1 8 b. "Established guidelines for certified individuals and
1 9 direct care workers" includes written protocols and procedures
1 10 as defined by the department for direct care workers,
1 11 emergency medical care providers as defined in chapter 147A,
1 12 and substance abuse counselors as certified by the Iowa board
1 13 of certification.
1 14 c. "Health care worker" means any individual employed by
1 15 or under contract with a hospital, health care provider, or
1 16 health care agency to provide health care services.
1 17 d. "Professional standards of care" means authoritative
1 18 statements that describe a level of care or performance common
1 19 to the profession by which the quality of professional
1 20 practice can be judged and which reflect the values and
1 21 priorities of the profession.
1 22 2. A health care worker, who reasonably believes a
1 23 particular practice the health care worker has observed
1 24 occurring at the health care worker's place of employment,
1 25 based on the health care worker's professional standards of
1 26 care, professional code of ethics, or established guidelines
1 27 for certified individuals and direct care workers, is a
1 28 material violation of health and safety laws or a breach of
1 29 public safety that may lead to harm to patients, consumers, or
1 30 citizens, may report the information relating to the violation
1 31 or breach within fourteen days of its occurrence to the health
1 32 care worker's supervisor, employer, or member of management or
1 33 administration, in order that investigation can be undertaken
1 34 and corrective action be initiated. The health care worker
1 35 shall be protected against reprisals or retaliatory or
2 1 punitive action by the individual or institution receiving
2 2 such a report.
2 3 3. If after fourteen days following report of a material
2 4 violation or breach pursuant to subsection 2, the health care
2 5 worker continues to see the particular practice occurring in
2 6 the workplace giving rise to the report, the health care
2 7 worker may disclose information to the appropriate licensing
2 8 board, the department, the department of inspections and
2 9 appeals, the department of human services, the Iowa healthcare
2 10 collaborative, the division of insurance in the department of
2 11 commerce, a member or employee of the general assembly, the
2 12 attorney general, a state-mandated health information
2 13 collection agency, any other public official or law
2 14 enforcement agency, federal government agency or program, the
2 15 governing board of the health care worker's employer or
2 16 institution, or the health care worker's professional
2 17 association, and shall be protected against reprisals or
2 18 retaliatory or punitive actions by the individual or employing

2 19 health care entity if disclosure of the information is not
2 20 otherwise prohibited by statute and if the information meets
2 21 any of the following requirements:

2 22 a. Constitutes state-mandated health data required to be
2 23 submitted to state agencies.

2 24 b. Informs state agencies or entities of violations of
2 25 state health, safety, occupational health, licensure, or
2 26 insurance laws.

2 27 c. Is reasonably believed by the health care worker to be
2 28 a material violation of health and safety laws or a breach of
2 29 public safety that may lead to a significant probability of
2 30 harm to patients or health care recipients, based upon the
2 31 health care worker's professional standards of care,
2 32 professional code of ethics, or established guidelines for
2 33 certified individuals and direct care workers.

2 34 A health care worker making a disclosure which violates any
2 35 provision of the federal Health Insurance Portability and
3 1 Accountability Act, Pub. L. No. 104-191, shall not be entitled
3 2 to protection pursuant to this section nor entitled to civil
3 3 remedies which might otherwise be available pursuant to
3 4 subsection 7.

3 5 4. A health care worker disclosing in good faith the
3 6 information described in subsections 2 and 3 shall be presumed
3 7 to have established a prima facie case showing a violation of
3 8 subsection 2 or 3 by the health care worker's employer if the
3 9 individual or institution employing the health care worker
3 10 knows or has reason to know of the disclosure, and if
3 11 subsequent to and as a result of the disclosure, one or more
3 12 of the following actions were initiated by the employer:

3 13 a. Discharge of the health care worker from employment.

3 14 b. Failure by the employer to take action regarding a
3 15 health care worker's appointment to, promotion or proposed
3 16 promotion to, or receipt of any advantage or benefit in the
3 17 health care worker's position of employment.

3 18 c. Any adverse change to the health care worker's terms or
3 19 conditions of employment or any administrative, civil, or
3 20 criminal action or other effort that diminished the
3 21 professional competence, reputation, stature, or marketability
3 22 of the health care worker.

3 23 An employer shall have the burden of proof regarding any
3 24 attempt to show that actions taken pursuant to this subsection
3 25 were for a legitimate business purpose or were required by law
3 26 or administrative rule, which if proven is a complete defense.

3 27 5. If an individual or institution employing a health care
3 28 worker is determined to have violated state health, safety, or
3 29 occupational health and health licensure laws or regulations,
3 30 or professional standards of care, professional code of
3 31 ethics, or established guidelines for certified individuals
3 32 and direct care workers, after a disclosure pursuant to
3 33 subsection 2 or 3 results in an action as described in
3 34 subsection 4, such a determination shall create a presumption
3 35 of retaliation or reprisal against the health care worker in
4 1 violation of this section. Disclosure of a reasonable belief
4 2 that violations of health and safety laws or breaches of
4 3 public safety have occurred that have caused or have a
4 4 potential to cause harm to patients and health care recipients
4 5 shall immediately trigger the protection afforded by this
4 6 section.

4 7 6. A person who violates this section is subject to a
4 8 civil action as follows:

4 9 a. A person who violates this section is liable to an
4 10 aggrieved health care worker for affirmative relief.

4 11 b. A person or entity who prevails in a civil action based
4 12 on this section is entitled to equitable relief the court
4 13 deems appropriate, including attorney fees and costs and
4 14 punitive or exemplary damages.

4 15 c. When a person commits, is committing, or proposes to
4 16 commit an act in violation of this section, an injunction may
4 17 be granted through an action in district court to prohibit the
4 18 person from continuing such acts. The action for injunctive
4 19 relief may be brought by an aggrieved health care worker or by
4 20 the county attorney.

4 21 d. A civil action brought pursuant to this subsection
4 22 shall be filed within six months from the date of the alleged
4 23 violation.

4 24 7. a. In addition to any other penalties applicable to a
4 25 person who violates this section, an individual, institution,
4 26 or organization employing a person who violates this section
4 27 shall be subject to a civil penalty in the amount of one
4 28 thousand dollars per violation.

4 29 b. A health care worker found to bring a frivolous,

4 30 malicious, or nuisance cause of action against a health care
4 31 employer under this section shall be subject to a civil
4 32 penalty in the amount of one thousand dollars per violation
4 33 and up to four thousand dollars of reasonable attorney fees.

4 34 EXPLANATION

4 35 This bill creates new Code section 147.105 to provide
5 1 protection for health care workers against retaliation or
5 2 reprisals resulting from the disclosure of certain
5 3 information.

5 4 The new Code section provides that a health care worker who
5 5 discloses information to a state or federal board, department,
5 6 or agency, including the attorney general and law enforcement
5 7 personnel, as described in the bill, after 14 days have
5 8 transpired following a report to the employer and opportunity
5 9 to take corrective action has transpired on the part of the
5 10 individual or institution which employs the health care worker
5 11 and which is the subject of the disclosure, shall be protected
5 12 against reprisals or retaliatory or punitive actions by the
5 13 employer if disclosure of the information is not otherwise
5 14 prohibited by statute. The bill provides that for this
5 15 provision to apply, the information disclosed must constitute
5 16 state-mandated health data required to be submitted to a state
5 17 agency, or inform a state agency or entity of a violation of
5 18 state health, safety, occupational health, licensure, and
5 19 insurance laws, or is reasonably believed by the health care
5 20 worker to be a violation of health and safety laws or a breach
5 21 of public safety that may lead to harm to patients or health
5 22 care recipients, based upon the health care worker's
5 23 professional standards of care, professional code of ethics,
5 24 or established guidelines for health care workers. The bill
5 25 provides that this provision shall not be applicable to a
5 26 disclosure which constitutes a violation of the federal Health
5 27 Insurance Portability and Accountability Act.

5 28 The new Code section provides that a health care worker
5 29 disclosing in good faith this information shall be presumed to
5 30 have established a prima facie case if the employer knows or
5 31 has reason to know of the disclosure, and if following and as
5 32 a result of the disclosure the health care worker was
5 33 discharged from employment, or there was a failure by the
5 34 employer to take action regarding a health care worker's
5 35 appointment or promotion, or any adverse change to the health
6 1 care worker's terms or conditions of employment as well as any
6 2 administrative, civil, or criminal action or other effort that
6 3 diminishes the professional competence, reputation, stature,
6 4 or marketability of the health care worker. The bill provides
6 5 that the employer shall have the burden of proof regarding any
6 6 attempt to show that these actions were undertaken for a
6 7 legitimate business purpose.

6 8 The new Code section provides that if an employer is
6 9 determined to have violated state health, safety, or
6 10 occupational health or health licensure laws or regulations,
6 11 or professional standards of care or a professional code of
6 12 ethics, or certain guidelines, after a disclosure by a health
6 13 care worker resulting in an action taken against the worker as
6 14 described in the bill, this creates a presumption of
6 15 retaliation or reprisal. The bill provides that violations of
6 16 health and safety laws or breaches of public safety that have
6 17 caused or have a potential to cause harm to patients and
6 18 health care recipients immediately trigger protection.

6 19 The new Code section provides that violations may be
6 20 grounds for a civil action. The bill provides that in such an
6 21 action, an employer may be liable to an aggrieved health care
6 22 worker for affirmative relief, and other equitable relief the
6 23 court deems appropriate, including attorney fees and costs and
6 24 punitive or exemplary damages. The bill also provides for
6 25 injunctive relief. The bill provides that in addition to
6 26 other penalties, an individual, institution, or organization
6 27 employing a person found to be in violation of the bill's
6 28 provisions shall be subject to a civil penalty in the amount
6 29 of \$1,000 per violation. In addition, the bill provides that
6 30 a health care worker found to have brought a frivolous claim
6 31 under this new Code section is subject to a civil penalty of
6 32 up to \$1,000 per violation and up to \$4,000 of reasonable
6 33 attorney fees.

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